

# The Consequences of Welfare Reform for Children

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The Symposium on the Implications of Welfare Reform coincided with the birth of my son. Although hardly remarkable (at least to those outside my circle of family and friends), I was struck by the overwhelming support I received throughout my pregnancy not only from family and friends, of course, but from my institution, colleagues, and even total strangers. People smiled at me. My groceries were carried. Doors were opened. Parking spots were conceded. The cultural message I received was clear and unambiguous—having a baby, *this* baby, was a good thing.

I was struck by how different our response is to the news that a poor mother is going to have a child. In our society today, that news is received with a mixture of anger, moral condemnation, and even resentment. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>1</sup> (Welfare Reform Act or Act) is, to a significant extent, a reflection of this attitude. By focusing on the worthiness of the parent rather than the joy occasioned by the birth of a child, the Welfare Reform Act has virtually ignored the effects its reforms will have on children. This amazing sleight of hand will prove devastating to the nation's poor children in ways that even opponents of welfare reform may not have foreseen.

The purpose of this Symposium, then, was to explore the various consequences of welfare reform for children whose interests had virtually been lost in the political debate surrounding implementation of the Welfare Reform Act. The interdisciplinary conference, held at The Ohio State University College of Law on March 12–13, 1999, provided a forum for some of this country's leading researchers and scholars in law, public policy, social work, economics, and social science. Their findings are contained in this issue of the *Ohio State Law Journal*.

The Welfare Reform Act is perhaps uniquely suited for interdisciplinary analysis. The Act itself purports to rest on the findings of social science. For example, the Act notes that births to unmarried women are closely related to the increase in the number of children receiving public assistance.<sup>2</sup> It lists the well-

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<sup>1</sup> Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.).

<sup>2</sup> See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C.

documented consequences of an out-of-wedlock birth on the child.<sup>3</sup> The Act also identifies the risks of single parenthood for children.<sup>4</sup> It is on these findings that the Act's underlying purposes—to promote two-parent families, to prevent and reduce out-of-wedlock births, to end dependence on welfare by promoting work, and to promote marriage—are based.<sup>5</sup>

While group data, when taken in context, may be useful in informing policy choice, it nevertheless has certain limitations. Leroy Pelton forcefully argues that social science data, to the extent they are used to form group constructs, should not be used as a basis for policymaking.<sup>6</sup> He contends that social science data creates generalizations about groups.<sup>7</sup> Because federal entitlement programs differentiate the worthy from the unworthy poor, any social science data gathered on the basis of these group constructs reinforces these categories.<sup>8</sup> While the data may be statistically valid, it nevertheless is based on arbitrarily constructed categories.<sup>9</sup> When those categories are themselves discriminatory, the data about those groups will be discriminatory, too.<sup>10</sup>

It also is unclear how the elimination of the entitlement program on which welfare had been based would improve the economic status of poor families. Peter Edelman, an outspoken critic of welfare reform, notes that despite strong economic growth in this country, poverty, and particularly child poverty, has not declined significantly.<sup>11</sup> He states that perhaps as many as half of all those leaving the welfare rolls do not find employment.<sup>12</sup> For those fortunate enough to find a job,

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§ 601 note (Supp. III 1997) (citing Pub. L. No. 104-193, § 101 (5)(c)). "The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Between 1970 and 1991, the percentage of live births to unmarried women increased nearly threefold, from 10.7 percent to 29.5 percent."

<sup>3</sup> See *id.* § 601 note (citing Pub. L. No. 104-193, § 101(8)). These include increased chance of going on welfare for the mother, low birth weight, low verbal cognitive attainment for the child, a greater risk of abuse and neglect, and an increased chance of being on welfare when the child reaches adulthood. *Id.* (citing Pub. L. No. 104-193, § 101(a)).

<sup>4</sup> See *id.* at § 601 note. These include poverty, low birth weight, and poorer school performance. *Id.*

<sup>5</sup> See *id.* § 601(a) (Supp. III 1997).

<sup>6</sup> See Leroy H. Pelton, *Welfare Discrimination and Child Welfare*, 60 OHIO ST. L.J. 1479, 1482 (1999).

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See Peter B. Edelman, *The Impact of Welfare Reform on Children: Can We Get It Right Before the Crunch Comes?*, 60 OHIO ST. L.J. 1493, 1495, 1501 (1999).

<sup>12</sup> See *id.* at 1493-94.

however, employment does not necessarily mean steady work<sup>13</sup> or earnings that are above the poverty line.<sup>14</sup> Thus, despite the political rhetoric, ending welfare insures neither employment nor a living wage.<sup>15</sup> This shortcoming obviously has negative consequences for children whose parents can provide their children with neither the basic necessities nor rely on the state for assistance.

The findings of a study by Lauren M. Rich and Ira M. Schwartz<sup>16</sup> indicate former welfare recipients may not be better off after welfare reform. By considering the characteristics of the average welfare recipient in the state of Pennsylvania,<sup>17</sup> the authors conclude that while the average recipient may experience an increase in annual income, her earnings still fall below the poverty line for a single parent with two children.<sup>18</sup> Moreover, it is not entirely clear that the average recipient would see an increase in her annual income after welfare reform if all sources of income, both reported and unreported, received by the recipient under the prior system were taken into account.<sup>19</sup> The less than average welfare recipient, however, may face serious obstacles to employment.<sup>20</sup> Lifetime caps on benefits, once implemented, may impose significant hardship on these recipients.

Mary Corcoran, Colleen Heflin, and Kristine Siefert have found that many families already are experiencing material hardship even before the lifetime caps become effective.<sup>21</sup> Their study of 753 single mothers with children in an urban Michigan county<sup>22</sup> indicates that a significant minority sometimes or often did not have enough to eat, had utilities cut off, and faced eviction or homelessness.<sup>23</sup> Although working recipients were more likely to meet their families' basic needs than were nonworking recipients, monthly income was unrelated to food insufficiency and material hardship.<sup>24</sup> Rather, the lack of a high school diploma, alcohol and drug dependence, physical and mental health problems, domestic violence, and little work experience were the strongest predictors of food

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<sup>13</sup> See *id.* at 1494.

<sup>14</sup> See *id.* at 1495.

<sup>15</sup> See *id.* at 1494.

<sup>16</sup> See generally Lauren M. Rich & Ira M. Schwartz, *A Rising Tide Does Not Raise All Boats: Welfare Reform in the City of Philadelphia*, 60 OHIO ST. L.J. 1423 (1999).

<sup>17</sup> See *id.* at 1430–39. These assumptions include a high school diploma, employment for at least 71% of the time, and a household size of one adult and two children. *Id.* at 1433.

<sup>18</sup> See *id.* at 1439.

<sup>19</sup> See *id.* at 1436–37.

<sup>20</sup> See *id.* at 1339–41.

<sup>21</sup> See Mary E. Corcoran, et. al., *Food Insufficiency and Material Hardship in Post-TANF Welfare Families*, 60 OHIO ST. L.J. 1395, 1407–12 (1999).

<sup>22</sup> See *id.* at 1404.

<sup>23</sup> See *id.* at 1412–13.

<sup>24</sup> See *id.* at 1413.

insufficiency and material hardship.<sup>25</sup> Prolonged exposure to these hardships has been associated with significant developmental disadvantages in children.<sup>26</sup>

The risk of material hardship after welfare reform may also increase the chances of state intervention into the lives of poor families. Naomi Cahn's article makes this point.<sup>27</sup> Cahn argues that the disappearance of welfare creates more possibilities for poor children to come into contact with the child protection system.<sup>28</sup> For example, the absence of affordable and accessible child care for poor working parents may place more children at risk.<sup>29</sup> Lifetime caps on benefits also may mean that parents who become ineligible for welfare are unable to provide their children with basic necessities; this, in turn, could trigger a finding of neglect.<sup>30</sup> Parents also may be discouraged from applying for benefits in the first instance because of new drug testing requirements and, for unmarried teen mothers, restrictions on living arrangements.<sup>31</sup> Limiting welfare may also mean that more parents voluntarily place their children in state custody to insure the children's well-being.<sup>32</sup>

This intersection between child abuse, neglect, and welfare reform is even more disturbing in light of recent federal reforms aimed at foster care and adoption. The Adoption and Safe Families Act,<sup>33</sup> with its new emphasis on permanency planning and adoption, signifies a major change in federal policy.<sup>34</sup> That shift is likely to accelerate the termination of parental rights but does little to insure that children will actually be removed from the foster care system for adoption.<sup>35</sup> Further, when the effects of welfare reform are felt by poor families, more children will be entering an already overburdened system.<sup>36</sup> The likelihood that welfare reform will place more families at risk for child protective services involvement now means that these families also face a real possibility that the parent-child relationship will be

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<sup>25</sup> See *id.*

<sup>26</sup> See *id.* at 1414.

<sup>27</sup> See generally Naomi R. Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189 (1999).

<sup>28</sup> See *id.* at 1199.

<sup>29</sup> See *id.* at 1190.

<sup>30</sup> See *id.* at 1199-1200.

<sup>31</sup> See *id.* at 1200.

<sup>32</sup> See *id.*

<sup>33</sup> Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.).

<sup>34</sup> See Cahn, *supra* note 27, at 1190.

<sup>35</sup> See *id.* at 1191.

<sup>36</sup> See *id.* at 1190-91.

terminated.<sup>37</sup>

Unfortunately, state intervention historically has posed special risks for poor children and their families. As Catherine Ross notes, the state often has intruded in the lives of poor families simply because they were poor and particularly if they did not share the same cultural values.<sup>38</sup> Thus, poor children have long been at risk of being removed from their homes and placed elsewhere by the state.<sup>39</sup> The Welfare Reform Act in many ways promotes this historical practice. By limiting benefits and permitting sanctions for noncompliance, the Act will increase the risk of removal and out-of-home placements for many children simply because their families are poor.<sup>40</sup> And with the enactment of the Adoption and Safe Families Act, these children are at risk for permanent separation from their parents.<sup>41</sup>

Welfare reform also is likely to change the way states provide foster care services. Susan Mangold notes that the Welfare Reform Act permits federal reimbursement for foster care provided by for-profit companies.<sup>42</sup> Although the entrance of for-profit companies into the child welfare arena does not necessarily mean a decline in the quality of services, the record of for-profit companies in providing services to children is poor.<sup>43</sup> Privatization, therefore, should necessitate greater governmental oversight of for-profit service providers.<sup>44</sup> Interestingly, oversight may have positive consequences, not only for the children in these placements but for the child welfare system as a whole, which would benefit from increased scrutiny.<sup>45</sup>

Increasing poverty among the nation's children after welfare reform also means that more children may be at risk for increased involvement with the juvenile court system.<sup>46</sup> The risks associated with poverty—greater social disorganization within neighborhoods,<sup>47</sup> the likelihood of victimization,<sup>48</sup> inadequate housing,<sup>49</sup> food

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<sup>37</sup> See *id.* at 1204.

<sup>38</sup> See Catherine J. Ross, *Families Without Paradigms: Child Poverty and Out-of-Home Placement in Historical Perspective*, 60 OHIO ST. L.J. 1249, 1250 (1999).

<sup>39</sup> See *id.*

<sup>40</sup> See *id.* at 1288.

<sup>41</sup> See *id.*

<sup>42</sup> See generally Susan Vivian Mangold, *Protection, Privatization, and Profit in the Foster Care System*, 60 OHIO ST. L.J. 1295 (1999).

<sup>43</sup> See *id.* at 1317.

<sup>44</sup> See *id.* at 1314–25.

<sup>45</sup> See *id.* at 1299.

<sup>46</sup> See generally Katherine Hunt Federle, *Child Welfare and the Juvenile Court*, 60 OHIO ST. L.J. 1225 (1999).

<sup>47</sup> See *id.* at 1239.

<sup>48</sup> See *id.* at 1240.

<sup>49</sup> See *id.* at 1241.

insufficiency,<sup>50</sup> health problems,<sup>51</sup> stress<sup>52</sup>—may lead to more juvenile delinquency, status offending, and abuse and neglect.<sup>53</sup> With more children at risk after welfare reform, juvenile court caseloads may increase.<sup>54</sup> Although the full effect of welfare reform on the juvenile court is not known (and may not be knowable unless states are willing to fund carefully designed studies),<sup>55</sup> there are indications that the juvenile court system is beginning to feel the impact.<sup>56</sup> Handling the problems of childhood poverty in this way, however, is ineffective and costly to society and the children and their families in that system.<sup>57</sup>

Congress also failed to anticipate the effects of welfare reform on the Medicaid program. Sara Rosenbaum and Kathleen Maloy argue that Medicaid has not changed into a program designed to provide the working poor with health insurance, a change necessitated by welfare reform's new emphasis on work.<sup>58</sup> Diverting families from welfare assistance by providing them with lump sum payments to meet immediate financial needs or directing them to mandatory job search programs may preclude Medicaid benefits which remain tied to AFDC eligibility requirements.<sup>59</sup> Another diversion technique—requiring applicants to identify alternative sources of income during the application process—may discourage families from seeking any form of welfare assistance.<sup>60</sup> Because of the states' historical practice in linking welfare and Medicaid applications, diversionary practices that discourage or delay welfare applications may also affect access to Medicaid for eligible families.<sup>61</sup> Furthermore, few states have responded to this disconnection between welfare and Medicaid by restructuring their Medicaid programs to service the working poor.<sup>62</sup>

The organizational response by the states to welfare reform also has consequences for children whose parents must leave welfare for work. As Thomas

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<sup>50</sup> See *id.* at 1231 & n.51.

<sup>51</sup> See *id.* at 1239.

<sup>52</sup> See *id.* at 1245.

<sup>53</sup> See *id.* at 1244.

<sup>54</sup> See *id.* at 1237.

<sup>55</sup> See *id.* at 1243.

<sup>56</sup> See *id.* at 1237.

<sup>57</sup> See *id.* at 1247.

<sup>58</sup> See Sara Rosenbaum & Kathleen A. Maloy, *The Law of Unintended Consequences: The 1996 Personal Responsibility and Work Opportunity Reconciliation Act and Its Impact on Medicaid for Families with Children*, 60 OHIO ST. L.J. 1443, 1444–45 (1999).

<sup>59</sup> See *id.* at 1447.

<sup>60</sup> See *id.* at 1459.

<sup>61</sup> See *id.* at 1457.

<sup>62</sup> See *id.* at 1469.

Gais and Cathy Johnson note, the states have considerable flexibility in creating and managing assistance programs for the poor because of the block grant structure of the Welfare Reform Act.<sup>63</sup> Their study of the institutional changes wrought by welfare reform in nineteen states indicates that most states have restructured their programs to promote and facilitate work and work-like activities on the assumption that children will benefit when their parents are employed.<sup>64</sup> Disturbingly, these states are not collecting information about the effects of structural and programmatic changes on children.<sup>65</sup> Although states could provide detailed information about welfare caseloads, for example, very few states could provide basic information about the experiences of children after welfare reform.<sup>66</sup> Consequently, the underlying assumption that children's lives will be improved by welfare reform remains largely untested.<sup>67</sup>

The study by Miriam Wilson and Charles Adams of Ohio's newly configured system<sup>68</sup> (one of the sites described in the larger study by Gais and Johnson) illustrates just how difficult it can be for states to assess the impact of welfare reform on children. Because of a long tradition of strong county government in the area of human services, welfare reform in Ohio has resulted in the devolution of decisionmaking authority from state to county government.<sup>69</sup> Consequently, each county has largely designed and supervised its own welfare program with considerable variation among each of these eighty-eight county programs.<sup>70</sup> Unsurprisingly, the experiences of children in each of these counties may differ widely.<sup>71</sup> Moreover, a trend to privatize welfare services by contracting with nongovernmental organizations indicates an even further devolution of decisionmaking authority<sup>72</sup> that may make an assessment of the effects of welfare reform on children more difficult.

We should not forget how welfare reform is likely to change the lives of millions of children. Gregory Williams' foreward<sup>73</sup> poignantly reminds us of this.

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<sup>63</sup> See Thomas L. Gais & Cathy M. Johnson, *Welfare Reform, Management Systems, and Their Implications for Children*, 60 OHIO ST. L.J. 1327, 1328 (1999).

<sup>64</sup> See *id.* at 1339–40.

<sup>65</sup> See *id.* at 1353–54.

<sup>66</sup> See *id.* at 1354.

<sup>67</sup> See *id.* at 1329.

<sup>68</sup> See generally Miriam S. Wilson & Charles F. Adams, Jr., *Welfare Reform: Ohio's Response*, 60 OHIO ST. L.J. 1357 (1999).

<sup>69</sup> See *id.* at 1367.

<sup>70</sup> See *id.* at 1386.

<sup>71</sup> See *id.*

<sup>72</sup> See *id.* at 1391.

<sup>73</sup> See generally Gregory H. Williams, *One Boy's View of the Welfare System*, 60 OHIO ST. L.J. 1077 (1999).

His personal experience with poverty and its attendant consequences—hunger, despair, isolation, humiliation—gives us a glimpse into the daily reality experienced by millions of poor children in this country. His account of his first and only trip to the welfare office (which resulted in a “handout” of \$5.50)<sup>74</sup> reminds us that poverty is not a choice. For America’s poor children, that reminder may have come too late.

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<sup>74</sup> See *id.* at 1182.